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A Woman's Right to Abortion

Roe v. Wade, 1973

***** Background of the Case *****

One of the most widely debated issues in recent times has been over whether a woman may legally have an abortion. Many religious groups have vigorously opposed abortion, while women's rights organizations and civil libertarians, as well as many unaffiliated individuals, have supported that right.

A unmarried pregnant woman, Jane Roe (a pseudonym), brought suit against District Attorney Wade of Dallas County, Texas. She challenged a Texas statute that made it a crime to seek or perform an abortion except when, in a doctor's judgment, abortion would be necessary to save the mother's life. Because Roe's life had not been threatened by her pregnancy, she had not been able to obtain an abortion in Texas.

*C*onstitutional Issue *****

Roe argued that her decision to obtain an abortion should be protected by the right of privacy, a right that stemmed from the Bill of Rights generally, and from the liberty interests guaranteed by the Fourteenth Amendment's due process clause. The state argued that the protection of life granted by the Fourteenth Amendment could not be applied to a fetus because a fetus was not a person in the eyes of the law.

***** The Supreme Court's Decision *****

The Court decided in Roe's favor. Justice Harry A. Blackmun wrote for the Court. The Court, with one dissent, approached its decision by acknowledging the delicacy and depth of the issue before it. Nevertheless, it was the Court's task "to resolve the issue by constitutional measurement free of emotion and of predilection."

Justice Blackmun reaffirmed that there was a right to privacy that could be inferred from the First, Fourth, Fifth, Ninth, and Fourteenth Amendments. He said that "the right has some extension to activities relating to marriage . . . , procreation . . . , (and) contraception. . . ." Accordingly, "the right of privacy . . . is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." Although specific and direct medical injury might follow a denial of choice, other injuries as well could result from an unwanted pregnancy. These include "a distressful life and future, psychological harm," and also the "distress . . . associated with the unwanted child, and . . . the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it." Yet the Court concluded that the privacy right was not absolute; accordingly, the right could not support an absolute right to choose abortion and "must be [balanced] against important state interests in regulation."

The Court then turned to the question of whether a fetus is a person within the meaning of the Fourteenth Amendment. The Court decided that a fetus was not a person under the Fourteenth Amendment. In reaching this conclusion, Justice Blackmun wrote, "We need not resolve the difficult question of when life begins. . . . The judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer." Nonetheless, the state has valid interests to protect. One is "preserving and protecting the health of the pregnant woman" and the other is "in protecting the potentiality of human life."

To satisfy both sets of interests, the Court divided the term of pregnancy into two parts, based on medical knowledge. The first part is the first trimester, or three-month period of pregnancy. The Court identified this period as the point up to which fewer women died from abortions than in normal childbirth. In order to preserve and protect women during this period, a state may regulate abortion procedures in such areas as doctors' qualifications and licensing of facilities. Beyond that, however, the state may not go. In the first trimester, the abortion decision belongs to the woman and her doctor.

The point at which the state's compelling interest in preserving potential life begins when that life is viable, or capable of living outside the womb. During this period, approximately the third trimester, the state may constitutionally regulate and even forbid abortion, except when necessary to preserve a woman's life or health. Between the end of the first trimester and the beginning of the point of viability—not specified, but usually around the beginning of the third trimester—the state may "if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health," the Court concluded.

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In Justice William H. Rehnquist's dissent, he questioned whether any constitutional right to privacy or liberty could be so broad as to include the complete restriction of state controls on abortion during the first trimester. In his view, "the Court's opinion will accomplish the seemingly impossible feat of leaving this area of the law more confused than it found it."

DIRECTIONS: Answer the following questions on a separate sheet of paper.

1. In what way did the Court break new ground in its ruling in the *Roe* case?
2. Explain the role of the state in abortion matters under the Court's ruling.
3. How did medical science play a role in the Court's ruling?
4. Where did Justice Rehnquist stand on the right to abortion?
5. Justice Rehnquist said the decision left the abortion area of the law more confused than it found it. What do you think he meant by that statement?